



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC617]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Naval Base Point Loma Fuel Pier Inboard Pile Removal Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the United States Navy (Navy) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma in San Diego Bay, California. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.fleming@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow,

upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and

Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals. Any comments received on the potential renewal, along with

relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On August 26, 2021, NMFS issued an IHA to the Navy to take marine mammals incidental to the Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma in San Diego Bay, CA (86 FR 48986), effective from January 15, 2022 through January 14, 2023. On November 16, 2022, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial

authorization but will not be completed prior to its expiration. At the time of submittal of the renewal request, no activities had been conducted (though the applicant indicated its intention to conduct some activities prior to expiration of the initial IHA). Therefore, a renewal is appropriate, and no monitoring data is available for review.

Description of the Specified Activities and Anticipated Impacts

The initial IHA authorized take incidental to the removal of 409 piles from the Fuel Pier at Naval base Point Loma by a variety of techniques (*i.e.* one to two pile clippers, an underwater chainsaw, a diamond wire saw, or a vibratory hammer, possibly with the assistance of a diver, to allow for continued Naval Fleet readiness activities. At the time of the request, the Navy has not done any work under the initial IHA. The activities that would occur under the renewal IHA consist of activities that are covered by the current authorization but will not be completed prior to its expiration (if any work is undertaken prior to expiration of the initial IHA). As the Navy has not done any work under the initial IHA at the time of their request, we assume here that the activities to be conducted under the renewal IHA are identical to those evaluated for the initial IHA.

Level B harassment (disruption of behavioral patterns and TTS for individual marine mammals resulting from exposure to the sounds produced from the underwater acoustic sources) is authorized under the initial IHA and proposed for authorization through this renewal for six species of marine mammal that could be present in the project area: California sea lion (*Zalophus californianus*), the northern elephant seal (*Mirounga angustirostris*), the harbor seal (*Phoca vitulina*), the bottlenose dolphin (*Tursiops truncatus*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the common dolphin (*Delphinus delphis*). Based on the nature of the activity and the anticipated effectiveness of the mitigation measures Level A harassment is neither anticipated nor proposed to be authorized.

The following documents are referenced in this notice and include important supporting information:

- Initial 2020 final IHA (86 FR 48986; September 01, 2021);
- Initial 2021 proposed IHA (86 FR 38274; July 20, 2021); and
- Initial IHA application, references cited, marine mammal monitoring plan, and San Diego Bay Acoustic Compendium (available at www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-fuel-pier-removal-naval-base-san-diego-california).

Detailed Description of the Activity

A detailed description of the pile removal activities for which authorization of take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization. The location and nature of the activities, including the methods and types of equipment planned for use, are identical to those described in the previous notices. The Navy intends to complete work by March 31, 2023, under the terms of a previously developed Memorandum of Understanding (MOU) between the Navy and the U.S. Fish and Wildlife Service (USFWS). According to this MOU, the Navy would only be performing in-water activities during a 196-day period from September 16 to March 31 to not interfere with the California least tern (*Sterna antillarum browni*) nesting season. However, the proposed renewal would be effective for a period extending to one year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the initial authorization. NMFS has reviewed the most recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and

determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA. This includes cases where stock abundances have changed. In all cases, stock abundance estimates are either the same (*i.e.* bottlenose dolphin, California sea lion, harbor seal), or have increased (common dolphin, Pacific white-sided dolphin, and northern elephant seal, with the exception of the long-beaked common dolphin, which has decreased. In all cases, our negligible impact determination has not changed.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the Notices of the Proposed IHA for the initial authorization. NMFS has reviewed the most recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization. Specifically, the source levels, days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA.

Table 1. Level B Harassment Take Estimates for the NBPL Old Fuel Pier Pile Removal Project

Common name	Level B Take Requested
California sea lion	1,260
Harbor seal	84
Northern elephant seal	7
Common dolphin	756
Pacific white-sided dolphin	84
Bottlenose dolphin	84

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this proposed authorization are identical to those included in the FR notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains accurate. The same measures are proposed for this renewal and are summarized here:

- The use of trained and qualified PSOs;
- The implementation of a 20 m shutdown zone that is larger than the predicted Level A harassment isopleths.
- Delay or halting of activities in the event that visibility decreases where the shutdown zone cannot be appropriately monitored; and,
- Pile removal during daylight hours only.
- A minimum of one to four PSO's are allowed, depending on the visibility of the 400 meter Level B harassment zone, the visibility of the entire shutdown zone, and the location of pile removal activities for concurrent pile clippers;
- PSO's will need to record all observations of marine mammals, regardless of the distance from the pile being removed.
- Draft and final monitoring reports will be submitted to NMFS.
- The Navy will submit all PSO datasheets and/or raw sighting data with the draft

report.

- Reporting of injured or dead marine mammals is required.

Table 3 – Shutdown and harassment zones (meters) for each method

Pile Information	Removal Method	Harassment Zone	Shutdown Zone
13-inch polycarbonate pile	One pile clipper	423	20
14-inch, 16-inch concrete piles	One pile clipper	250	
14-inch, 16-inch concrete piles	Two pile clippers	250	
14-inch, 16-inch concrete piles	Underwater chainsaw	229	
14-inch, 16-inch concrete piles	Diamond wire saw	575	
14-inch, 16-inch concrete piles	Vibratory hammer	311	

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (86 FR 38274; July 20, 2021) and solicited public comments on both our proposal to issue the initial IHA for Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma and on the potential for a renewal IHA, should certain requirements be met.

Preliminary Determinations

The proposed renewal request consists of activities identical to those that are covered by the initial authorization. The methods of determining estimated take, potential effects, and required mitigation, monitoring and reporting have not changed.

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). We found that the activities authorized under the initial IHA would have a negligible impact and that the taking would be small relative to the population size.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of common dolphin, Pacific white-sided dolphin, and northern elephant seal stocks increasing slightly and the population estimate for long-beaked common dolphin decreasing slightly. As such, our negligible impact determination has not changed. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) The Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Navy for conducting the Fuel Pier Inboard Pile Removal Project at Naval Base Point Loma in San Diego Bay, California from January 15, 2023 to January 14, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: December 16, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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